STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7270

Joint Petition of Verizon New England Inc., d/b/a Verizon Vermont, certain affiliates thereof, and FairPoint Communications, Inc. for approval of an asset transfer, acquisition of control by merger and associated transactions)

Order entered: 11/26/2008

ORDER RE: NOTICE OF CUTOVER READINESS

I. INTRODUCTION

The Vermont Public Service Board ("Board") approved FairPoint Communications, Inc.'s ("FairPoint")[1] acquisition of the landline telecommunications system in Vermont owned and operated by Verizon New England Inc., d/b/a Verizon Vermont ("Verizon") on February 15, 2008. FairPoint and Verizon closed the transaction on March 31, 2008. At that time, FairPoint obtained ownership of the telecommunications network and became the service provider, but Verizon, through the Transition Service Agreement ("TSA"), continued to provide the Operation Support Systems ("OSS") used for functions such as ordering, provisioning, and billing until FairPoint's own systems were ready to assume the responsibility. The services provided under the TSA continue until the cutover of systems to FairPoint. Under the TSA, FairPoint must provide notice when it is ready for cutover to occur.

On November 12, 2008, FairPoint filed its Provisional Notice of Cutover Readiness, asserting that it "will be ready by November 30, 2008 to file an irrevocable notice of cutover

1. Since the acquisition, the Vermont entity is Telephone Operating Company of Vermont, LLC, d/b/a FairPoint Communications.

readiness with Verizon."[2] FairPoint and Verizon plan to have the cutover occur in the last weekend of January 2009. This operation would involve transferring all of the functions provided by the legacy systems operated by Verizon, as well as the data in those systems, to new OSS developed by FairPoint.[3]

Liberty Consulting Group ("Liberty"), the independent third-party monitor that FairPoint, with the agreement of the Department of Public Service ("Department"),[4] hired in response to our Order requiring the employment of such a monitor, has concluded that FairPoint has sufficiently satisfied the criteria for cutover readiness that, with appropriate conditions, the Vermont Public Service Board ("Board") should permit the cutover to occur. The Department concurs with this assessment. Several competitive local exchange carrier ("CLEC") parties, however, contest FairPoint's assessment and Liberty's analysis and recommendations, contending that FairPoint has not adequately tested its systems. The CLECs argue that FairPoint has failed to demonstrate that the cutover will not adversely affect them in significant ways, since they rely heavily on FairPoint's systems.

In this Order, the Board authorizes FairPoint to issue its irrevocable notice of cutover readiness, although we adopt additional requirements that FairPoint must meet to address cutover

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2. Exh. FairPoint-102. FairPoint filed a Supplemental Statement Concerning Notice of Cutover Readiness on November 20, 2008, responding to additional concerns raised by parties and making the same assertion. Exh. FairPoint-101.

3. A more detailed explanation of these systems is set out in our Order of 12/21/07, beginning at p. 177. As we described in that Order:

> 472. "Conversion" or "cutover" is the process by which all data and business processes are transferred from the Verizon systems to their counterpart systems at FairPoint. The task involves a complex mapping of each source data element in Verizon's systems to the corresponding required data elements in FairPoint's systems, the development of conversion programs to automate the translation and loading of data to FairPoint's systems, and the confirmation that the FairPoint systems would operate accurately and responsively with the new data. Mills pf. at 5.
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> 473. Conversion will require the replacement of most or all Verizon operational and business systems and the integration and conversion of over 1,500,000 new customers. Mills pf. at 5–6.

Order of 12/21/07 at 180.

4. The independent monitor, Liberty, has been hired with the approval not only of the Department, but also of the New Hampshire Public Utilities Commission ("NHPUC") and Maine Public Utilities Commission ("MPUC") and has worked at the direction of those three agencies.

issues raised during this proceeding.[5] The evaluation of FairPoint's systems, staffing, business processes, and training plans indicate that FairPoint should be well-positioned to operate its own, newly-developed systems and discontinue its reliance on Verizon's. Any transition this large and complicated (replacing work performed by some 600 Verizon systems), is likely to lead to issues; some aspects of the cutover may well experience problems as happened when FairPoint's pre-existing Vermont systems changed billing systems several years ago. The analysis prepared by the independent third-party monitor indicates that FairPoint's system testing, staffing, training and analysis of business processes have progressed sufficiently that such issues are likely to be minimized. Cutover to FairPoint's systems will also terminate the approximately $16 million monthly payments to Verizon for TSA services across the northern New England states; Vermont's share of this payment is approximately $3 million per month.

Notwithstanding our conclusion that FairPoint may issue its notice, we continue to have some concerns about the cutover of systems that will require further monitoring and action by FairPoint prior to cutover. These relate primarily to the wholesale systems. FairPoint needs to continue its testing of these systems, which it has committed to do through December 5, 2008. In particular, the Department and Comcast Phone of Vermont, LLC ("Comcast") have identified additional tests that we will require the OSS to pass. Comcast has also recommended specific tests that FairPoint, after consultation with Liberty, should consider running. Further, FairPoint must ensure that the Daily Usage Feed ("DUF") files distributed to CLECs are complete and accurate and distributed in a format that enables CLECs to import them.

In addition to the need for more work related to wholesale systems, FairPoint and Liberty concur that FairPoint has not completed its documentation of key business processes. We accept Liberty's conclusion that the "documentation is sufficiently complete and accurate and the

5. The parties requested that we adopt these provisions as "conditions" on the Order, consistent with our normal practice. Under that approach, the permission that the Board grants the petitioning entity is operable subject to those conditions, whether they are conditions precedent or subsequent. In this case, FairPoint must issue its notice of cutover readiness, which is then irrevocable. Making the order contingent on conditions subsequent thus raises the question of whether the Board has, in fact, granted FairPoint permission to issue the notice, since by definition it could not later be revoked. To eliminate any uncertainty, we do not make this Order conditional (although paragraph 3 of the ordering clauses must be accomplished before the notice is issued). However, we do adopt additional requirements with which FairPoint must comply.

process of correction and improvement has been substantially institutionalized."[6] Similarly, FairPoint must continue the development of and implement its training programs for the new systems.

The Board intends to monitor the progress towards cutover after FairPoint provides its notice to Verizon. The third-party monitor obligations that we imposed as a condition of our approval of FairPoint's acquisition continue to apply; we expect that Liberty will continue its monitoring and bring any issues to the Board's attention.

II. Background and Procedural History

In our February 15 Order approving the acquisition, we included several conditions intended to assure that the cutover to the new systems did not occur until FairPoint's systems were fully functional and would provide necessary services to both retail and wholesale customers. These conditions were essential to avoid potential adverse affects on customers if the systems did not operate correctly. In reaching this conclusion, we were mindful that after Verizon's sale of its Hawaii properties, the last major telecommunications acquisition that required transition to new systems, major problems for wholesale and retail customers occurred that have taken years to correct. Accordingly, we specifically included a condition enabling us to review FairPoint's cutover decision and delay it:

> 49. Until FairPoint is obliged to give notice to Verizon to activate cutover on a specific date, the Board may order that cutover be delayed, if it has substantial concerns about FairPoint's readiness.[7]

In addition, the Board approved a plan whereby FairPoint would hire a consultant (with the concurrence of the Department), to independently monitor and report on cutover readiness.[8] As we found in the Order:

> Under the agreement, the monitor will review FairPoint's planned testing process, including the standards by which the readiness of the systems is assessed, to determine whether it is appropriate to proceed with the cutover of systems and functions provided by Verizon to FairPoint's Northern New England

6. Exh. DPS-101 at 21.
7. Order of 2/15/08 at 48.
8. *Id*. at 31–34, 48. *See also*, Order of 12/21/07 at 190–195.

> operation. . . . The Independent Monitor will also monitor the progress being made towards cutover readiness and flag any emerging issues for state regulators. . . . The Independent Monitor's review will examine both retail and wholesale functions, so that the concerns of CLECs can be addressed.[9]

Pursuant to this arrangement, Liberty has been actively engaged in monitoring cutover issues (since October 2007) and has filed monthly reports documenting FairPoint's progress, leading up to the report filed on November 12, 2008.

Supplementing Liberty's monitoring efforts, the Board convened workshops on cutover and other transition issues on May 21, June 20, July 16, August 20, September 18, and October 17.

Following Liberty's November 12, 2008, report, the Board convened a Status Conference on November 14, 2008. At that time, we concluded that enough questions remained about FairPoint's readiness to proceed with cutover that it was necessary to hold an evidentiary hearing. That hearing was held on November 21, 2008. In addition to FairPoint, Verizon, and the Department, the Board heard testimony on FairPoint's notice from Verizon Business Global LLC ("Verizon Business"), Comcast, One Communications, Inc. ("One Comm"), segTel, Inc. ("segTEL"), and Sovernet, Inc. Most of these parties also filed post-hearing briefs or recommendations.

III. Board Discussion and Conclusion

A. Criteria for Cutover Assessment

In order to determine readiness for cutover, FairPoint developed a Cutover Readiness Verification Plan. This plan specifies that FairPoint must demonstrate readiness in five different areas:

- Tests of FairPoint's new Capgemini-developed operational support systems, which will replace the Verizon systems
- Tests of FairPoint's ability: (a) to correctly accept the data extracted from Verizon's systems as will be necessary to operate FairPoint's business, and (b) to convert that data into a form that can be used by the new operational support systems

9. Order of 2/15/08 at 31–32 (citations omitted).

- Demonstration of the existence and documentation of the key business processes that must operate successfully at cutover
- Demonstration that key staff positions that are necessary at cutover are filled
- Demonstration that training of the FairPoint staff in the new systems and processes will be successfully completed by cutover.[10]

Liberty previously evaluated the Verification Plan and found it to be reasonable. Liberty and all parties used the Verification Plan as the framework against which to evaluate FairPoint's readiness for cutover, although Liberty and the CLECs have raised additional issues related to the effect of cutover on wholesale services that they believe FairPoint must address.

We find these criteria to be a useful framework for our review, although we agree with Liberty and the CLECs that it is important to consider issues outside of these criteria as well.

B. Liberty's Assessment

In its report, Liberty concluded that FairPoint had met several of the criteria. Specifically, FairPoint has demonstrated that the positions identified as key staff positions at the time of cutover have been filled.[11] In addition, FairPoint has met all of the criteria related to the automatic conversion of the data extracts from Verizon's source systems into the new FairPoint systems.[12] FairPoint has also successfully completed the testing of its OSS, except those related to provision of wholesale services to CLECs. This testing included evaluation of the stand-alone systems and linked operations, end-to-end performance testing using expected volumes, and testing by the system users.[13] No party challenges any of these conclusions (although, as we discuss below, certain CLECs suggest that more testing of retail systems may be appropriate because of what they characterize as flaws in the wholesale systems).

For the CLEC testing issues, Liberty concluded in its report that FairPoint had not yet met all of the criteria. During the hearing on November 21, 2008, Liberty revised that assessment and now concludes that:

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10. Exh. DPS-101 at 2.
11. Exh. DPS-101 at 21–22.
12. Exh. DPS-101 at 19–20.
13. Exh. DPS-101 at 3–11, 17–19.

> Based on what we know today and based on the progress that FairPoint has made in addressing the issues that we've identified needed to be addressed, we don't believe that the remaining issues constitute a significant impediment to declaring cutover readiness.[14]

Several CLECs directly contest the adequacy of the testing. Others raise concerns about other aspects of the services that they receive from FairPoint that may be affected by cutover. These are addressed below.

Finally, Liberty concluded that FairPoint had not met the specific criteria of the Verification Plan related to the documentation and approval of key business processes and the development and completion of training proposals. As we discuss in more detail below, Liberty finds that FairPoint's progress and the expectation of completion prior to cutover are such that the present inadequacies should not serve as an impediment to cutover.

C. CLEC Issues

1. Testing

SegTEL, Comcast, and Verizon Business assert that the testing of FairPoint's wholesale OSS is inadequate and does not demonstrate that they will function properly. SegTEL focuses on the fact that FairPoint has intentionally limited and controlled CLEC testing, by limiting the number of tests that can be run and restricting the tests to only the "front-end" system. As a result, segTEL asserts that it cannot determine whether parity exists between the functionality the OSS provides to the CLECs as compared to that provided to its own retail operations. SegTel maintains that its testing (using the web Graphical User Interface ("GUI")) demonstrates that FairPoint's OSS is not adequate. More broadly, segTEL contends that neither FairPoint's testing nor Liberty's oversight complies with the market-opening requirements of the federal Telecommunications Act of 1996, because the OSS was not subject to the same rigorous testing that applied to companies seeking relief under Section 271 of that Act.

Comcast agrees with segTEL that the OSS testing does not meet the cutover readiness criteria. Comcast uses an electronically bonded ("e-bonded") interface (as opposed to the GUI). Comcast maintains that the testing has not fully demonstrated that the e-bonded interface is

14. Tr. 11/21/08 at 64 (King).

functional, citing an additional series of tests that it concludes that FairPoint must run. Moreover, Comcast faults FairPoint for not having fully tested the e-bonded interface on an end-to-end basis.[15] As a result, Comcast asks that the Board permit FairPoint to issue its notice of cutover readiness only if FairPoint conducts certain additional tests, including life cycle and regression testing, and certifies that it has conducted successful integration of the e-bonded system with FairPoint's other systems. Comcast also recommends that we adopt a requirement that FairPoint continue to develop and test its systems so that they function in a manner similar to the support CLECs received from Verizon.

Verizon Business also contends that the environment for the CLEC testing was unduly limited.[16] In addition, Verizon Business asserts that the GUI has not been tested under stress volumes. Overall, Verizon Business argues that FairPoint's systems contain missing, incomplete, or untested functionality and thus are not ready for cutover.

The Department recommends that the Board include a condition requiring FairPoint to successfully complete two additional tests on the e-bonded interface prior to issuing notice of cutover readiness.[17]

In response, FairPoint maintains that it conducted a series of additional tests based upon input from Liberty and the CLECs, conducting 12 additional tests following Liberty's report. FairPoint asserts that it has run a sufficient number of tests to minimize the likelihood of significant failures after cutover.[18] Moreover, FairPoint contends that it has completed all of the tests requested by Comcast.[19] Finally, FairPoint argues that its systems provide similar availability and range of functionality for testing to that which Verizon now provides when it makes changes to its OSS.

The disagreement between the CLECs and FairPoint (with the Department and Liberty siding with FairPoint) is in large part a debate about the appropriate level of testing that should apply to assessing the functionality of FairPoint's OSS. For their part, the CLECs are rightly

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15. Comcast Post-Hearing Letter of 11/24/08 at 2–3.
16. Exh. Verizon-101 at 4–5.
17. Exh. DPS-102.
18. Exh. FairPoint-101 at 1–3.
19. Tr. 11/21/08 at 116 (Murtha).

concerned that if the systems do not function properly following cutover, they will suffer adverse consequences that could translate to a loss of customers. As a result, they seek a testing regimen that is equivalent to that which the FCC required for Bell Operating Companies seeking permission to enter the long-distance market, including extensive end-to-end testing of all components of the CLEC interface. These concerns are bolstered by the fact that FairPoint's testing of the e-bonded interface was limited, CLEC testing of that interface has been based upon a limited sample, and the GUI appears to produce unexplained errors at times.

By contrast, FairPoint focuses on the fact that its back office systems function properly and its full end-to-end testing of the GUI produced no significant errors. As to the e-bonded interface, FairPoint maintains that it and the CLECs have conducted testing on a reasonable sample of scenarios, with the tests being successfully completed.

We agree with the CLECs that it is essential that FairPoint's systems continue to provide CLECs with an equivalent level of access that they have now under Verizon's systems. It was for this reason that we included the following condition in the February 15, 2008, Order.

> 55. The Independent Monitor, established to ensure FairPoint's system conversion process is implemented in a manner which eliminates risk to customers, should include as one of its criteria an assurance that FairPoint's systems comply with the market opening requirements of the 1996 Act.[20]

However, this requirement was not intended to have the effect that the CLECs now seek to assign it. No party advocated during the deliberations on the sale nor did we require that FairPoint's systems undergo the same testing protocol that applied to companies seeking relief under Section 271. Thus, we had no expectation that the independent third-party monitor would require or suggest the same testing as was done for the Section 271 proceedings. For this reason, we do not accept segTEL's contention that Liberty has not complied with our requirements.

In resolving this dispute between the conflicting views of the CLECs and FairPoint as to the adequacy of the testing, we rely heavily on the independent assessment of Liberty and the Department. It was to provide such an unbiased, independent view that we required the employment of the independent monitor. Here, Liberty has represented that all of FairPoint's internal, retail systems function properly. In addition, Liberty's report and FairPoint's

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20. Order of 2/15/08 at 49.

representations show that FairPoint extensively tested the functionality of the GUI, including end-to-end tests that showed no serious defects.[21] In addition, with the testing completed last week, FairPoint and Liberty assure us that the e-bonded interface appears to function as well.

We recognize FairPoint did not evaluate the end-to-end functionality of the e-bonded interface. The absence of this testing remains a concern, particularly since certain CLECs rely upon it for their services. The testing protocol that FairPoint established also did not permit the CLECs themselves to conduct end-to-end tests of the full system or conduct tests using their own data. Nonetheless, Liberty concluded that since (a) both the e-bonded and GUI front-end systems have been shown to function, (b) FairPoint's internal OSS function properly, and (c) the end-to-end GUI testing shows that the front-end and internal systems provide full functionality, the testing that FairPoint has done has effectively evaluated the end-to-end process. As Liberty explained:

> So if you put the two together, if the CLECs are coming in with EDI[22] and GUI transactions and they hit that front-end that has now been tested extensively going to all these other processes and systems, then I would say they have been tested end-to-end.[23]

We also do not find the absence of end-to-end CLEC testing to be a fatal flaw. This has not been used in the past when Verizon has made changes to its OSS. Nor did the CLECs test the OSS as part of the Section 271 process (testing was provided by an independent, third party).

Thus, we conclude that the testing of the wholesale systems has been adequate, with the exception of certain specific tests identified by the Department (these tests are similar to some of those recommended by Comcast). Accordingly, we will require that, prior to giving notice of cutover readiness, FairPoint complete and pass these tests. In addition, FairPoint shall, as it represented it would, continue to permit CLEC testing at least through December 5, 2008. We expect that FairPoint will continue to evaluate the results of these tests and update its systems to

21. Tr. 11/21/08 at 33–35 (Falcone, King).
22. Electronic Data Interchange.
23. Tr. 11/21/08 at 67–68 (Falcone).

remedy any errors. In addition, as FairPoint represented it would during hearings, FairPoint will extend this testing window if problems are identified.[24]

2. Daily Usage Feeds

Verizon now provides some CLECs with Daily Usage Feeds ("DUF"), which are files that contain usage information that some CLECs need to bill their customers.[25] As of the time of the hearing, FairPoint had not yet successfully provided correct and complete DUF files to the CLECs. The absence of this information could mean that CLECs would be unable to accurately bill their retail and wholesale customers and provide actual dialed call data records.[26] In its assessment of FairPoint's readiness for cutover, Liberty concluded that FairPoint should "assure that all defects are correctly identified and have assigned fix dates or acceptable workarounds, including those associated with the DUF files."[27] Liberty indicated that FairPoint was continuing to work on the problem, but that it was not fully resolved.

FairPoint responded that, while the DUF files may not meet all of the CLECs' needs, there are no system defects.[28] FairPoint expects to resolve all open issues by the end of November and plans to continue testing these files through December. FairPoint recommends that Liberty should continue to monitor FairPoint's performance.

The CLECs express concern over the state of the DUF files. Sovernet and One Comm both request that the DUF files be successfully transmitted to the CLECs at least 30 days prior to cutover. Sovernet recommends that, if there is an issue with the files such that the CLECs are unable to bill their customers, FairPoint be responsible for any loss of revenue arising from the error.[29]

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24. Tr. 11/21/08 at 114, 117–118 (Nixon).

25. Tr. 11/21/08 at 19–20 (Falcone).

26. Tr. 11/21/08 at 123–124 (Maloney); exh. Verizon-101 at 3.

27. Exh. DPS-101 at 17.

28. Exh. FairPoint-101 at 7. Liberty concurred that the DUF files met industry standards, but that the issue was customization that CLECs had previously received. Tr. 11/21/08 at 74–75 (Falcone, King).

29. Tr. 11/21/08 at 124–125 (Maloney). This would not apply if FairPoint was able to successfully transmit usage and billing data within a reasonable time thereafter. *Id*. at 129–130 (Maloney).

We agree with the CLECs that the provision of accurate usage data to FairPoint's wholesale customers is essential. This information is necessary for a CLEC to generate accurate bills for their customers. We will require FairPoint to resolve all open issues and generate complete and accurate DUF files prior to cutover. After cutover, if FairPoint cannot provide a CLEC with such accurate and complete usage information within a reasonable time, FairPoint shall compensate the CLEC for any lost revenues. This means that if FairPoint provides inaccurate files or files that cannot be read, but is able to correct the DUF files within a reasonable time, it would not be subject to compensation. This should adequately address the CLECs' need for accurate information on which to bill their customers, without subjecting FairPoint to compensation where the problem is formatting rather than substance.

3. Hot Cut Process

In its assessment, Liberty noted that some CLECs had concerns about FairPoint's hot cut process.[30] A part of these concerns related to the fact that FairPoint's process was different from Verizon's. In addition, FairPoint's process was not fully automated. As a result, Liberty initially concluded that FairPoint should "modify its hot cut process to address the concerns raised by the CLECs, providing an acceptable workaround by cutover and a more permanent solution after cutover."[31]

Subsequent to Liberty's report, FairPoint developed an interim, modified hot cut process.[32] It discussed this process with CLECs at the wholesale users forum. Liberty has now concluded, based on its review of the modified process and the comments at the wholesale users forum, that the interim solution is acceptable.

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30. "Hot cut" refers to the process by which FairPoint transfers a customer whose line is connected to a FairPoint central office from one retail provider to another. It involves essentially transferring the wires from one switch to another. The hot cut process is designed to minimize service disruptions. Tr. 11/21/08 at 37 (Falcone).

31. Exh. DPS-101 at 17.

32. FairPoint plans to further refine the hot cut process following cutover. Tr. 11/21/08 at 81 (Murtha), 114–115 (Nixon).

In its comments, OneComm asks that the Board incorporate a condition requiring FairPoint to develop its long-term hot cut method within 30 days following cutover.[33] Verizon Business expressed a similar concern.[34] SegTEL contends that FairPoint and Liberty must ensure that FairPoint's interim and permanent hot cut processes provide CLECs with a meaningful opportunity to compete. FairPoint opposes the proposed 30-day deadline, but has agreed to develop the automated hot cut process within 90 days after cutover.[35]

There is no disagreement that FairPoint needs to complete development of an automated hot cut process, with full support to wholesale customers.[36] The question raised here is whether that process must be completed before cutover and, if not, how soon thereafter.

We accept Liberty's conclusion that the interim hot cut solution is a process that will adequately protect CLECs and their customers through the cutover period and until FairPoint can develop its automated procedure. FairPoint's solution should ensure that hot cuts continue to be performed in a manner that keeps the CLEC fully informed and minimizes disruption to customers. In addition, we conclude that FairPoint must implement its automated hot cut process no later than 60 days after cutover. This will allow FairPoint to focus on ensuring that its systems function properly and that any flaws are rapidly corrected immediately after cutover, while still getting the automated process in place quickly. In response to segTEL's concerns, it is our understanding that review of the development of the automated hot cut process is included within Liberty's scope of work. We expect that Liberty will raise any concerns it has to the Department and the Board. In addition, any party may ask the Board to review the automated process if they conclude that it is not consistent with a fair competitive environment.

33. Exh. One Comm CR-1 at 3.
34. Tr. 11/21/08 at 178 (Lichtenberg).
35. Tr. 11/21/08 at 114–115 (Nixon); FairPoint letter of 11/24/08 at 3.
36. For example, Verizon now offers a toll-free number with 24-hour support.

4. Line-Loss Reports

Verizon now provides automated line-loss reports to CLECs. This is a daily report that notifies CLECs when customers change carriers or disconnect their service. This allows companies to adjust their billing, thereby avoiding double billing of customers.[37]

To date, FairPoint has been unable to automatically "push" the line-loss data to CLECs; instead CLECs were forced to retrieve the information from FairPoint's web site.[38] Liberty concludes that the absence of this functionality should not affect the determination of cutover readiness. Liberty considers the ability to "pull" data to be an adequate substitute until FairPoint can complete the automated information distribution.[39] Moreover, FairPoint has now developed the ability to distribute the line-loss data automatically and plans to implement this functionality before cutover.[40]

Verizon Business asserts that the Board should not permit FairPoint to provide notice of cutover readiness until it has shown that it can provide accurate and timely line-loss reports.

We conclude that the line-loss report concerns are not an impediment to cutover. As Liberty testified, CLECs can still obtain accurate and complete line-loss reports even without the automated distribution. Moreover, we accept FairPoint's commitment to resolve this issue prior to cutover.[41]

5. Retail Billing

Verizon Business suggests that the errors in the wholesale billing process, such as the failure to provide correct and complete DUF files, suggests that retail billing may be an issue. Verizon Business states that the two systems are similar.

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37. Exh. Verizon-101 at 5; tr. 11/21/08 at 22–23 (Falcone).
38. Exh. DPS-101 at 15.
39. *Id.*; tr. 11/21/08 at 62–63 (Falcone).
40. Tr. 11/21/08 at 23 (Falcone).
41. Exh. FairPoint-101 at 10.

Liberty's report shows that FairPoint has done extensive testing of its billing system. All of the tests conducted were completed successfully, although some minor errors were identified; all of these errors were corrected quickly.[42]

We find that Verizon Business has not presented sufficient basis for us to determine that FairPoint's retail billing systems are not ready for cutover. They were extensively tested with only minor, easily corrected errors. Nothing presented by the parties demonstrates that the retail billing information is inaccurate. In fact, the evidence demonstrates that, contrary to Verizon Business's suggestion, the wholesale billing information is also accurate; the problems with the DUF files have pertained to formatting and coding flaws, not inaccurate data extracts.

A second issue related to retail billing arises from the fact that FairPoint plans to make changes to its billing formats at the time of cutover. There is no indication that these changes have resulted in errors. However, audits conducted by FairPoint revealed a number of differences compared to the current billing under the TSA. FairPoint has reviewed the differences with Liberty and plans to share them with each of the state commissions.[43]

The Department recommends that the Board adopt a condition requiring FairPoint to provide the Board and Department with a written description of any changes to its billing that it intends to implement at cutover pertaining to the application of tariffed rates, fees, surcharges, or taxes. The Department asks that FairPoint provide this information by December 5, 2008, and meet with the Department on or before that date. In addition, the Department proposes that, if Fairpoint does not agree with any changes the Department proposes, it shall seek review by the Board by December 19, 2008.[44] This condition would apply to both retail and wholesale bills.[45]

We agree with the Department's recommendation; our Order requires FairPoint to provide information related to the billing changes that are consistent with the Department's proposal.

42. Exh. DPS-101 at 6–7.
43. Exh. FairPoint-101 at 9.
44. Exh. DPS-102.
45. Tr. 11/21/08 at 220 (Campbell).

6. Installation Intervals

Earlier this month, FairPoint established a revised installation interval guide to be used from mid-January through the end of March. These revised installation intervals would replace the normal intervals for order completion, which are based upon industry standards. The revised intervals, which will apply to both wholesale and retail customers, are intended to help manage expectations during the cutover period and immediately thereafter.[46]

Comcast asserts that the proposed porting intervals are not acceptable and must be shortened. Comcast contends that the proposed intervals constitute an impediment to competition.[47] SegTEL adds that any extension of the intervals "tends to impede and delay the choice that customers have made to leave FairPoint in favor of other carriers."[48] The Department also expressed concern about the intervals, stating that they would prefer to see them limited.[49] The Department proposed two conditions to address these concerns. The first would require FairPoint to return to normal provisioning intervals by March 16, 2009, and require credits to wholesale and retail customers for certain nonrecurring charges in the period from March 16–May 3, 2009, for certain missed orders or appointments. However, as proposed, this condition would not take effect if FairPoint provided adequate information on provisioning intervals by December 5, 2008.[50] A second condition would require that FairPoint file a plan by December 15, 2008, for communicating with the public concerning potential delays in service ordering during the cutover period.[51] FairPoint does not oppose these conditions.

We share the parties' concerns about the potential delays in processing orders that wholesale and retail customers may experience during the two-and-one-half month period in which FairPoint intends to extend the provisioning intervals. We recognize that the work that will be occurring around cutover is likely to lead to a delay in fulfilling some orders and that it is appropriate to create reasonable expectations reflecting this likelihood. However, any extended

46. Exh. FairPoint-101 at 9; tr. 11/21/08 at 108–109 (Nixon).
47. Exh. CPVT-CR-1 at 9.
48. SegTEL post-hearing Brief at 15.
49. Tr. 11/21/08 at 223, 233–234 (Campbell).
50. Tr. 11/21/08 at 254 (Campbell).
51. Exh. DPS-102.

intervals should be as limited as practicable. To its credit, FairPoint has been working to reduce the extended intervals from those it originally proposed. We expect that this refinement will continue.

In terms of the potential effect on competitors, we note that many of the metrics in the Performance Assurance Plan ("PAP"), which applies to FairPoint's wholesale services, are parity measures. These require FairPoint to provide the same access to ordering and other functionality, as well as provisioning intervals, to its competitors that it provides itself. These measures should provide protection to CLECs against anti-competitive behavior. In addition, other measures in the PAP are absolute standards; FairPoint has not requested a waiver of any of these standards so they will continue to apply. We will review the provisioning intervals at the next workshop on transition issues; to the extent that CLECs continue to have concerns, they should raise them at that time. We will require FairPoint to provide its provisioning intervals to the Board in advance of the workshop.

We do agree with the Department that we should adopt requirements related to public information on the changed provisioning during the cutover period and on bill credits. FairPoint has accepted these provisions.

7. Other Requirements

One Comm asks that the Board adopt a condition requiring that cutover implementation issues identified by the CLECs, such as the extended proposed provisioning intervals through March 2009, be subject to a Board-sponsored technical session at least 30 days before cutover.[52] FairPoint contends that such a condition is unnecessary, noting that it had already reduced the provisioning intervals.[53]

We do not adopt the condition requested by One Comm as we find it unnecessary. The Board will continue to convene its monthly workshops to review transition issues. The next one is scheduled for December 19, 2008. One Comm and other parties are free to raise issues during that process.

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52. Exh. One Comm-CR-1 at 3.

53. Tr. 11/21/08 at 115–116 (Nixon).

D. Business Processes

The cutover-readiness criterion for the business processes is: "100 percent of key policies, processes, scripts, and methods and procedures are documented, reviewed, and approved by FairPoint senior management or their designees."[54] FairPoint has been working to document its business processes and has made substantial progress. However, FairPoint's work is not complete and still contains errors. Because of the ongoing updating of the business processes, Liberty concluded that FairPoint had not fully met the criterion. Nonetheless, Liberty concludes that "the process FairPoint is using to continually update and correct the documents is the correct approach and more realistic than what was contemplated when this cutover criterion was originally proposed."[55] This factor, and the two and one-half month period before the planned cutover date, leads Liberty to conclude that the documentation is "sufficiently complete and accurate and the process of correction and improvement has been sufficiently institutionalized" that it should not be an impediment to declaring cutover readiness.[56]

No party contested Liberty's recommendation, although the Department recommended that the Board adopt a condition requiring FairPoint to continue to provide regular updates to Liberty. In addition, the Department asks that FairPoint be required to provide supporting written documentation as requested.

We accept Liberty's recommendation. FairPoint's progress in developing its business processes and its ongoing efforts to finalize and correct the remaining processes lead us to conclude that we should not prevent a cutover-readiness declaration on this basis. In reaching this conclusion, we are mindful that FairPoint still has a substantial body of work to complete before system cutover at the end of January.

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54. Exh. DPS-101 at 20.
55. *Id.*
56. *Id.*

E. Training

FairPoint's cutover to the systems that it designed requires that it train employees on the use of the new system and the business processes. FairPoint developed four cutover-readiness acceptance criteria for staff training:

- 100 percent of train-the-trainer courses executed and the results are approved;
- The final version of training documentation has been delivered, reviewed and approved;
- Planned training courses are completed with 90 percent of students demonstrating proficiency; and
- The remaining training courses have time allotted to absorb additional training if needed.[57]

Liberty found that, at this time, FairPoint had not completed the second and third of these criteria and that, therefore, FairPoint had not demonstrated cutover readiness. Liberty's assessment was in part, a function of timing: training is designed to occur near cutover, after completion of initial system development, process development, system and process testing, and defect fixing.[58] This means that there is insufficient evidence to assess the completeness of the materials and the success of the training, since these are intended to happen after the notice of cutover readiness.[59] However, Liberty had an opportunity to observe the preparation of training materials and the quality of some of the training that has occurred. As a result, Liberty concludes that, even though not all of the readiness criteria have been met, the training should not be an impediment to declaring readiness for cutover. Implicit in this conclusion is the expectation that FairPoint will also complete its training before cutover.

57. Exh. DPS-101 at 22.
58. Exh. DPS-101 at 24.
59. Exh. FairPoint-103 at 10–11 (King).

F. Further Actions by Liberty

In its comments, OneComm asks that we adopt a condition requiring Liberty to continue its monitoring and reporting activities and provide updates to the Board and CLECs.[60] Comcast asks for a similar condition.[61] FairPoint stated during the hearing that it was not opposed to such a condition and that it expected Liberty to continue its efforts. In addition, the Department testified that Liberty would be continuing its work through and following the cutover.

In this Order, we adopt a condition that would require that the independent monitor continue to function through the system cutover.[62] Moreover, although we do not specifically order it at this time, we would also expect that, if significant issues remain following cutover, it would be appropriate for this function to continue. We note that such work was specifically contemplated by the Department, NHPUC, MPUC, and FairPoint when they negotiated the agreement concerning the independent monitor that we approved in our February 15 Order. As we found at the time, "if, after cutover, the State Regulators continue to have concerns, the scope of work would permit retention of the Independent Monitor to assess problems and assist in remediation."[63]

G. Data Extract Validation

One essential component of the cutover of systems from Verizon to FairPoint is the transfer of data from Verizon. As discussed above, Liberty assessed FairPoint's ability to incorporate the data extract and found that it met the readiness criteria. Liberty did not conduct such a review of the information generated by Verizon, although FairPoint has examined data extracts that Verizon has produced to date. FairPoint has also used this data in its testing.[64] However, FairPoint has also identified some errors in the information.[65]

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60. Exh. One Comm-CR-1 at 3.
61. Exh. CPTV-CR-1 at 3, 7.
62. As the selection of the independent monitor was made by the Department, MPUC, NHPUC, and FairPoint, our order does not specifically mandate that Liberty fulfill that function, although we expect that Liberty will continue that role.
63. Order of 2/15/08 at 33.
64. Tr. 11/21/08 at 89–90 (Haga, Nixon).
65. *Id.* at 102–103 (Haga).

The Department recommends that we include a condition related to the data extract that Verizon will provide in December. The Department's proposal sets requirements for Verizon to correct data and maintain copies of the existing data.

Verizon opposes the Department's proposed condition, which it maintains has three requirements upon Verizon that violate the TSA and the related Distribution Agreement. Verizon contends that, with the exception of an error that was corrected, the data extracts to date have been accurate. Verizon also argues that the Department's proposal impermissibly alters the terms of the TSA, in violation of the state and federal constitutions.

In this Order, we accept the Department's proposal with the exception of its proposed paragraph (d). These provisions simply set out requirements for the validation of data received from Verizon if there are questions raised as to the completeness and accuracy of that data. It in no way affects Verizon's and FairPoint's obligations under the TSA, nor is it intended to. Rather, it simply sets an affirmative process in place which is subject to the oversight of the Board. Moreover, because there is no change to the TSA, we do not need to address Verizon's constitutional arguments related to our ability to modify that agreement.

As to proposed paragraph (d), which would require Verizon to maintain an archive of all the data in its systems currently used to support FairPoint, we agree with Verizon that the standard is vague. Verizon has already committed to retain a copy of the data that it provides to FairPoint. In addition, in its Brief on cutover conditions, Verizon represents that it backs up the "golden source systems" that house the data to be extracted regularly. This appears to be sufficient to achieve the Department's goal. We will include a requirement that Verizon maintain the data consistent with its agreement.

IV. Conclusion

Overall, we are persuaded that FairPoint should be permitted to provide its notice of cutover readiness to Verizon, as it now intends. The testing of the OSS shows that these systems should function properly and provide the necessary functionality to FairPoint itself as well as to its wholesale customers. The CLECs have identified some shortcomings in the testing regimen employed by FairPoint. However, the third-party monitor that we required to provide an independent, unbiased view of FairPoint's readiness for cutover has represented that the testing shows that the systems will function. As a result, FairPoint may issue notice to Verizon, although we do adopt a number of requirements that we find necessary and appropriate to address presently outstanding issues in a timely manner.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. FairPoint Communications, Inc. ("FairPoint") may submit its notice of cutover readiness to Verizon New England Inc., d/b/a Verizon Vermont ("Verizon").

2. Consistent with the Memorandum of Understanding between FairPoint, the Department of Public Service ("Department"), the New Hampshire Public Utilities Commission, and the Maine Public Utilities Commission, the independent third-party monitor shall continue to provide oversight of cutover issues until such time as the Public Service Board ("Board") determines that such oversight is no longer necessary.

3. Prior to providing Notice of Cutover Readiness to Verizon, FairPoint shall determine that it has successfully tested and passed the Electronic Data Interchange-related competitive local exchange carrier ("CLEC") test cases identified as, "Parsed Customer Service Record on a multi-line Telephone Number" and "Billing Completion Notice Response" and shall file an affidavit with the Board and Department not later than two business days after it has done so. FairPoint shall not be required to fulfill this condition prior to Notice of Cutover Readiness if it makes a bona fide request to a CLEC which has requested these tests and the CLEC does not participate in the test during more than one test window.

4. FairPoint shall implement its automated hot cut process no later than 60 days following cutover.

5. No later than the date of cutover, FairPoint shall complete and implement a process for distributing line-loss data automatically.

6. FairPoint shall return to normal pre-cutover provisioning intervals for retail and wholesale installation, addition, and change orders not later than March 16, 2009. If FairPoint

meets fewer than 90% of retail installation appointments (as defined in its retail service quality plan) or of its wholesale due dates (as defined in Performance Assurance Plan metric, "PR-4 'Missed Appointments'") in a single week during the period March 16-May 3, 2009, it shall begin within one week to credit wholesale and retail customers any nonrecurring charges for any new missed installation appointments or wholesale orders missed through May 10, 2009. FairPoint shall file with the Board and Department by January 9, 2009, a listing of standard pre-cutover wholesale and retail provisioning intervals, based on historical practice. The requirements of Condition 3 will only go into effect if FairPoint does not provide to the Department detailed interval information that is reasonably satisfactory to the Department by December 5, 2008.

7. By December 15, 2008, FairPoint shall file a plan for communicating with the public about the potential for delays in ordering service due to the cutover period.

8. FairPoint shall complete the documentation, review, and approval by senior management of the key policies, processes, scripts, and methods and procedures before cutover to Verizon.

9. FairPoint shall continue to provide regular oral updates at least weekly to the independent third-party monitor on the status of FairPoint's pre-cutover training program and review and refinement of key business process documentation. FairPoint shall provide supporting written documentation as requested.

10. FairPoint shall resolve all open issues and generate complete and accurate DUF (Daily Usage Feed) files prior to cutover. After cutover, if FairPoint cannot provide a CLEC with such accurate and complete usage information within a reasonable time, FairPoint shall compensate the CLEC for any lost revenues arising due to the inaccurate or incomplete information.

11. By December 5, 2008, FairPoint shall file a written description of any changes to wholesale or retail bills it intends to implement at cutover related to the application of tariffed rates, fees, surcharges, or taxes compared to the manner in which Verizon billed these charges. By this date, FairPoint shall also meet with the Department to discuss the changes. Any party that disagrees with the proposed implementation may petition the Board by December 19, 2008.

12. FairPoint shall complete a review of the validity of all key data extracts provided to it by Verizon not later than December 12, 2008, and it shall consult with the independent third-party

monitor regarding the results in sufficient detail for the monitor to form an opinion regarding the likely completeness and accuracy of these data extracts.

(a) Upon notice by FairPoint after FairPoint consults with the independent third-party monitor that it is unable to adequately validate the accuracy and completeness of a particular key data extract prior to December 19, 2008, Verizon shall submit evidence of its own validation of key data extract accuracy and completeness to FairPoint.

(b) Verizon shall correct all data extract errors it becomes aware of prior to cutover or upon notice after cutover at no cost to FairPoint.

(c) FairPoint shall notify the Board and Department if it makes a request to Verizon to correct an error in a key data extract and Verizon does not agree to correct the error within 5 business days.

(d) Verizon shall maintain a copy of all the final data extract transferred to FairPoint for a period of at least one year.

Dated at Montpelier, Vermont, this 26th day of November, 2008.

s/James Volz	)	PUBLIC SERVICE
s/David C. Coen	)	BOARD
s/John D. Burke	)	OF VERMONT

OFFICE OF THE CLERK

FILED: November 26, 2008

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.